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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPU



11-CV-872 -LTR

UNITED STATES DISTRICT COURT

for the

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DEBORAH R. BEATON,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.; and  
NORTHWEST TRUSTEE SERVICES, INC.)

Defendants,

CASE NO. 2:11-cv-00872-RAJ

PLAINTIFF'S RESPONSE IN  
OPPOSITION TO MOTION TO  
DISMISS AMENDED COMPLAINT

NOTE ON MOTION CALENDAR:  
AUGUST 12, 2011

Plaintiff, DEBORAH R. BEATON, proceeding without counsel, hereby serves her Response in opposition to Defendant NORTHWEST TRUSTEE SERVICES, INC. and JPMORGAN CHASE BANK, N.A. (by joinder Dkt. #28), Motion to Dismiss Amended Complaint (Dkt. #25) and as grounds states:

STATEMENT OF CASE

Plaintiff attempted four times to restrain the Trustee's Sale and the Court denied each motion. The Defendants incorrectly interpreted the Courts denial of TRO as a green light to sell the Plaintiff's property ignoring the fact that federal lawsuit was pending. The sale changed the dynamic of the case which necessitates that the Plaintiff amends her complaint. This is not

RESPONSE IN OPPOSITION TO MOTION  
TO DISMISS

Deborah R. Beaton, Plaintiff  
31431 46<sup>th</sup> PI SW  
Federal Way, WA 98023  
(509) 499-1607

1 the fault of the Plaintiff. A copy of the purposed First Amended Complaint is attached to the  
2 Plaintiff's Motion for Leave to Amend Verified Complaint.

3  
4 **PLAINTIFF'S RESPONSES**

5 **Plaintiff's Response to Defendant's "I. INTRODUCTION & RELIEF REQUESTED":**

6 Plaintiff OBJECTS. The Plaintiff's dispute of the authenticity of the purported Note is of  
7 such significance that 12(b)(6) dismissal is not appropriate.

8 **Plaintiff's Response to Defendant's "II. BACKGROUND":** Plaintiff OBJECTS. None of  
9 the Defendants filed a response to any of the Plaintiff's Motions for TRO and/or Preliminary  
10 Injunctions. The Trustee received the required 5 days notice pursuant to "RCW 61.24.130 (2)  
11 No court may grant a restraining order or injunction to restrain a trustee's sale unless the  
12 person seeking the restraint gives five days notice to the trustee of the time when, place  
13 where, and the judge before whom the application for the restraining order or injunction is to  
14 be made. This notice shall include copies of all pleadings and related documents to be given  
15 to the judge. No judge may act upon such application unless it is accompanied by proof,  
16 evidenced by return of a sheriff, the sheriff's deputy, or by any person eighteen years of age or  
17 over who is competent to be a witness that the notice has been served on the trustee."  
18

19  
20 **Plaintiff's Response to Defendant's "III. STATEMENT OF FACTS":**

21 **Plaintiff's Response to Defendant's un-numbered ¶1:** Plaintiff OBJECTS that the  
22 Defendants do not in any way rely upon their own records whereas the Defendants are  
23 the party making a claim on the Plaintiff's estate.

24 **Plaintiff's Response to Defendant's un-numbered ¶2:** Plaintiff OBJECTS. Just  
25

26 because the Plaintiff obtained a loan does not automatically mean the Defendants are

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1 the beneficiary of it nor entitled to enforce it.

2 **Plaintiff's Response to Defendant's un-numbered ¶3:** Plaintiff OBJECTS. Just  
3 because a Deed of Trust was recorded does not automatically mean the Defendants  
4 are the beneficiary of it nor entitled to enforce the obligation secured by it.  
5

6 **Plaintiff's Response to Defendant's un-numbered ¶4:** Plaintiff OBJECTS because  
7 Defendant CHASE states that 'a copy of the original Note has been produced' but  
8 does not state 'who' produced it. Plaintiff disputes the authenticity of the copy version  
9 of the Note and denies that it is the Plaintiff's original. Plaintiff also objects because  
10 the copy version of the Note has an incomplete endorsement and that does not reveal  
11 if or when the Note was purportedly transferred to the Defendants and therefore the  
12 Court should not presume they own it.  
13

14 **Plaintiff's Response to Defendant's un-numbered ¶5:** Plaintiff OBJECTS. The  
15 Defendants have not provided any evidence that proves the Plaintiff defaulted, all the  
16 Defendants have done is 'allege' a default. Alleging a default is permitted under the  
17 DTA (*RCW 61.24 et. seq.*) as long as all the parties acquiesce. However, if a party  
18 does not acquiesce, their recourse is to the Courts where the default must then be  
19 proven. Defendants have done nothing to prove their alleged default is real. Plaintiff  
20 disputes the alleged default and has not acquiesced to it because the Note is not  
21 endorsed to the Defendants. The filing of an objection to a claim initiates a contested  
22 matter. RCW 61.24.030(8)(j) "A statement that the borrower, grantor, and any  
23 guarantor has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged  
24 default on any proper ground.  
25  
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1       **Plaintiff's Response to Defendant's un-numbered ¶6:** Plaintiff OBJECTS. There  
 2 is no evidence of if or when the purported loan was transferred to the Defendants,  
 3 therefore the Plaintiff disputes that the Defendant had the Beneficiary's authority and  
 4 power to appoint the successor trustee on November 29, 2010.

5  
 6       **Plaintiff's Response to Defendant's un-numbered ¶7:** Plaintiff OBJECTS. The  
 7 Beneficiary's Declaration does not comply with RCW 61.24.005(2) but instead relies  
 8 upon the RCW 62A.3.301. This declaration fails because the true Beneficiary, as  
 9 defined by RCW 61.24.005(2), must assert its own legal rights and may not assert the  
 10 legal rights of others. *Sprint*, 554 U.S. as 289; *Warth*, 422 U.S. at 499; *Oregon v.*  
 11 *Legal Servs. Corp.*, 552 F.3d 965, 971 (9<sup>th</sup> Cir. 2009).

12  
 13       Furthermore, *In re: Veal*, Bk. No. 09-14808, 9<sup>th</sup> Cir. BAP, June 10, 2011,  
 14 Case No. 10-1055 [2011 WL 2304200], Chapter III. Discussion §(B)(1) page 17:  
 15 (underline and emboldened printed is added for emphasis only) "**Here, the parties**  
 16 **assume that the Uniform Commercial Code ("UCC") applies to the Note. If**  
 17 **correct, ....**". This brings into question whether the UCC applies to Plaintiff's Note  
 18 and Deed of Trust at all.  
 19

20       Lastly, in *Pavino v. Bank of America*, USDC WDWA Case No. 2:10-cv-  
 21 01943-RSL, Order dated 03/04/2011, §C (Dkt. 26), the Court ruled that there is no  
 22 legal authority holding that a "person entitled to enforce" an instrument within the  
 23 meaning of RCW 62A.3-301 qualifies as a "beneficiary" within the meaning of RCW  
 24 61.24.005(2).  
 25  
 26

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1 **Plaintiff's Response to Defendant's un-numbered ¶8:** Plaintiff OBJECTS because  
2 there is no evidence that the Defendants were entitled to record a Notice of Trustee's  
3 Sale in the first place.

4 **Plaintiff's Response to Defendant's un-numbered ¶9:** Plaintiff OBJECTS because  
5 there is no evidence that the Defendants were entitled to hold such a sale nor that the  
6 sale was lawful.

7  
8 **Plaintiff's Response to Defendant's "IV. ISSUES PRESENTED":**

9 "1." and "2": Plaintiff OBJECTS. Plaintiff now needs to file an amended complaint  
10 because the Defendants sold the subject property in spite of the Plaintiff's objections.

11 **Plaintiff's Response to Defendant's "IV. EVIDENCE RELIED UPON":** Plaintiff  
12 OBJECTS because many if not all of the public records were made by the Defendants and  
13 actually constitute material violations of the Deed of Trust Act.

14 **Plaintiff's Response to Defendant's "VI. AUTHORITY AND ARGUMENT":** Plaintiff  
15 OBJECTS as follows:

16 **Plaintiff's Response to Defendant's "VI.1":** As stated above, the Plaintiff tried 4 times to  
17 restrain the trustee's sale and court denied each motion. The Defendants incorrectly  
18 interpreted the Courts denial of TRO as a green light to sell the Plaintiff's property ignoring  
19 the fact that a federal lawsuit was pending. The sale changed the dynamic of the case which  
20 necessitates that the Plaintiff amends her complaint. This is not the fault of the Plaintiff.

21 **Plaintiff's Response to Defendant's "VI.2":** Plaintiff OBJECTS. As stated above, the  
22 Plaintiff tried 4 times to restrain the trustee's sale and court denied each motion. The  
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1 Defendants incorrectly interpreted the Courts denial of TRO as a green light to sell the  
 2 Plaintiff's property ignoring the fact that a federal lawsuit was pending. The sale changed the  
 3 dynamic of the case which necessitates that the Plaintiff amends her complaint. This is not  
 4 the fault of the Plaintiff.  
 5

6 **Plaintiff's Response to Defendant's "VI.2.B":** Plaintiff OBJECTS. As stated above, the  
 7 Plaintiff tried 4 times to restrain the trustee's sale and court denied each motion. The  
 8 Defendants incorrectly interpreted the Courts denial of TRO as a green light to sell the  
 9 Plaintiff's property ignoring the fact that a federal lawsuit was pending. The sale changed the  
 10 dynamic of the case which necessitates that the Plaintiff amends her complaint. This is not  
 11 the fault of the Plaintiff.  
 12

13 **Plaintiff's Response to Defendant's "VI.2.C":** Plaintiff OBJECTS. As stated above, the  
 14 Plaintiff tried 4 times to restrain the trustee's sale and court denied each motion. The  
 15 Defendants incorrectly interpreted the Courts denial of TRO as a green light to sell the  
 16 Plaintiff's property ignoring the fact that a federal lawsuit was pending. The sale changed the  
 17 dynamic of the case which necessitates that the Plaintiff amends her complaint. This is not  
 18 the fault of the Plaintiff.  
 19

20 **Plaintiff's Response to Defendant's "VI.2.C.1." and "1.a.":** Plaintiff OBJECTS. Plaintiff  
 21 incorporates all preceding paragraphs and adds that Washington law only provides that  
 22 recording of an Assignment of Deed of Trust is unnecessary; however RCW 61.24.020  
 23 clearly states that Deed of Trust are subject to mortgage laws and without a recorded  
 24 assignment the Defendants failed to establish their lien priority pursuant to RCW 65.08.070.  
 25 Thus, under Washington law the other way to establish a lien priority (perfect a security  
 26

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1 interest) is by an unbroken chain of endorsements of the Note. This means each successive  
2 intermediary holder must endorse the Note to the next holder. Here, the Defendant's have  
3 neither. The Defendants foreclosed an unsecured Note and violated the Fair Debt Collection  
4 Practices Act (FDCPA), materially violated the DTA, violated the Plaintiff's civil rights to  
5 contract pursuant to 42 USC §1981-§1986. These violations did not exist when the former  
6 complaints were filed, and only became material after the Trustee's Sale, thus the Plaintiff  
7 will require leave to amend the complaint accordingly.

9 **Plaintiff's Response to Defendant's "VI.2.C.1.b.":** Plaintiff OBJECTS. First, the  
10 Defendants failed to attach Schedule 3.2 or at least the portions of it that would list the  
11 Plaintiff's property in asset pool being transferred. Second, nothing in the exhibit states that  
12 transfer of those assets can be completed with endorsements and/or assignments. Third, the  
13 paragraph 3.1 referred to by the Defendant is so all encompassing that it includes everything  
14 on Failed Banks books and everything not on the Failed Banks books too.

16 **Plaintiff's Response to Defendant's "VI.2.C.2":** Plaintiff OBJECTS. Nothing the  
17 Defendants have offered has removed any uncertainty for the Plaintiff, for the copy of the  
18 purported Note that is not endorsed to the Defendants, to the alleged default, to the Purchase  
19 and Assumption Agreement that conveniently leave off the schedule of assets supposedly  
20 transferred to the Defendant without any means of conveyance. The UCC and RCW 62A.3-  
21 301 have been discussed above.

23 **Plaintiff's Response to Defendant's "VII. CONCLUSION":** Plaintiff OBJECTS. As  
24 stated above, the Plaintiff tried 4 times to restrain the trustee's sale and court denied each  
25 motion. The Defendants incorrectly interpreted the Courts denial of TRO as a green light to  
26

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1 sell the Plaintiff's property ignoring the fact that a federal lawsuit was pending. The sale  
2 changed the dynamic of the case which necessitates that the Plaintiff amends her complaint.  
3 This is not the fault of the Plaintiff.

4  
5 PLAINTIFF'S CONCLUSION

6 Plaintiff requests that Court deny the Defendant Motion to Dismiss.

7 Respectfully submitted this 4<sup>th</sup> day of August, 2011,

8 Plaintiff: Deborah R. Beaton

9 Signature: 

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